

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

GARY DICKEY, JR.  
Petitioner,

V.

IOWA ETHICS AND CAMPAIGN  
DISCLOSURE BOARD,  
Respondent,

No. \_\_\_\_\_

# PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION

# PETITION FOR JUDICIAL REVIEW

COMES NOW Petitioner, Gary Dickey, Jr., and requests this Court to set aside the Iowa Ethics and Campaign Disclosure Board's order dismissing his complaint against the Kim Reynolds for Iowa candidate committee. In support of this Petition for Judicial Review of Agency Action, Petitioner states the following:

## INTRODUCTION

The question presented in this Petition for Judicial Review is whether the Gary Dickey Jr.’s September 17th complaint to the Iowa Ethics and Campaign Disclosure Board (“Board”) contained “legally sufficient” allegations of facts that would constitute a violation of Iowa’s campaign finance laws. Iowa Code § 68B.32B. If the allegations in Dickey’s complaint were legally sufficient, then the Board’s dismissal order must be reversed. If the allegations were not legally sufficient, then the Board’s dismissal must be upheld. Because Dickey’s complaint undeniably asserts legally sufficient facts to constitute a violation of Iowa law, the Board’s order must be set aside.

**BACKGROUND**

1. On December 30, 2017, Governor Kim Reynolds and her husband flew to Memphis, Tennessee to watch the Iowa State Cyclones football team play in the Liberty Bowl and to contemporaneously attend a campaign event.

2. They traveled on a 2010 Gulfstream G200 jet owned by Sedgwick — a Memphis-based company that administers workers compensation claims filed by injured state employees. *See* Ryan Foley, *Review: Iowa Gov. Kim Reynolds flew to Liberty Bowl on vendor's plane*, Des Moines Register (Sept. 13, 2018).<sup>1</sup>

3. Iowa campaign finance law prohibits corporate contributions to candidate committees. Iowa Code § 68A.503.

4. To get around this prohibition, Sedgwick's chief operating officer, David North, reimbursed the company for the cost of the jet service and provided the flight to the Reynolds for Iowa candidate committee in the form of an in-kind contribution.

5. This arrangement is legal so long as the contribution is properly disclosed in the candidate committee's campaign finance disclosure reports.

6. To satisfy the legal requirement for proper disclosure, the candidate committee must "report the estimated fair market value of the in-kind contribution at the time it is provided to the committee." *Id.* § 68A.402(1)(A).

7. Similarly, the Board's administrative rules require a candidate committee to report an in-kind contribution at "the actual (if known) or estimated fair market value of the good or service received." 351 Iowa Admin. Code § 4.17(1),(6).

8. To that end, the Reynolds for Iowa Campaign disclosed North's in-kind contribution on its January 19, 2018, Schedule E as "Travel Flight" in the amount of \$2,880.00.

9. On September 17, 2018, Gary Dickey Jr. filed a written complaint with the Board asserting that the Reynolds for Iowa candidate committee “underreported the fair market value of an in-kind contribution from David North in the form of private jet service for Kim Reynolds and her husband to and from Memphis, Tennessee on or about December 30, 2017.” (09/17/2018 Complaint to Board at 2).

10. The complaint cited the applicable provisions of Iowa law setting forth the requirement that in-kind contributions be reported at fair market value. (09/17/2018 Complaint to Board, Ex. 1).

11. The complaint included quotations from three private jet service providers, which indicate that fair market value for a similar roundtrip flight between Des Moines and Memphis for two passengers to be far in excess of \$2,880.00. (09/17/2018 Complaint to Board, Ex. 3-5).

12. The matter came before the Board on September 20, 2018, and the members present voted unanimously to dismiss Dickey’s complaint.

13. The same day, the Board issued a written “Order Dismissing Complaints.” (09/21/2018 Order Dismissing Complaints).

14. In its Order, the Board concluded “the valuations of the flights in this case appear to be consistent with . . . IRS Regulation section 1.61-21.” (09/21/2018 Order Dismissing Complaints at 7).

15. This statement is a demonstrably false.

16. The Board’s Order also concludes that its “rule 351—4.47 allows the contributor, Mr. North, to estimate the fair market value of the trip using coach class airfare.” (09/21/2018 Order Dismissing Complaints at 7).

17. The rule to which the Order references, section 4.47(4), refers to circumstances in which a candidate committee pre-pays a corporation for access to a corporate jet. 351 Iowa Admin. Code § 4.47(4)(a).

18. In such circumstances, a candidate committee's use of a corporation's jet is considered to be a campaign expenditure; not an in-kind contribution. *Id.*

19. Because the Reynolds for Iowa candidate committee did not reimburse Sedgwick for the flight, rule 351—4.47(4)(a) does not apply.

20. Instead, the relevant rule is 351—4.47(1), which defines fair market value as “the amount that a member of the general public would expect to pay to purchase or rent similar property within the community in which the property is located.” 351 Iowa Admin. Code § 4.47(1).

21. Remarkably, the Board's order makes no mention rule 4.47(1).

22. In other words, the Board overlooked its own definition of fair market value in favor of two other valuation methods.

23. In this regard, the Board's action is not only incorrect, it is indefensible.

24. Because the general public deserves to have accurate information concerning the Reynolds for Iowa in-kind contributions before the impending general election, Dickey filed a motion to reconsider with the Board.

25. The motion to consider was rejected without Board consideration.

#### **NATURE OF AGENCY ACTION**

26. This Petition seeks judicial review of other agency action.

**AGENCY ACTION CHALLENGED**

27. This Petition challenges the Board's September 20th order dismissing Gary Dickey Jr.'s complaint asserting that Reynolds for Iowa underreported the fair market value of David North's in-kind contribution of private jet service to the Liberty Bowl.

**VENUE**

28. Venue is proper in Polk County as this is a Petition for Judicial Review. Iowa Code § 17A.19(2).

**GROUND UPON WHICH RELIEF IS SOUGHT**

29. Upon receipt of a complaint, the Board shall make a formal determination of the "legal sufficiency of the allegations contained in the complaint." Iowa Code § 68B.32B(4).

30. A complaint is legally sufficient if it alleges facts that would establish:

- (a) a violation of a provision of chapter 68A of the Code of Iowa or any rules adopted by the Board;
- (b) conduct occurring within the past three years; and
- (c) subject matter jurisdiction of the Board.

*Id.*

31. Dickey's complaint alleged facts sufficient to satisfy subsections (a) through (c) of section 68B.32B(4).

32. The Board's determination to the contrary is (1) based upon an erroneous interpretation of the law; (2) inconsistent with a rule of the agency; (3) an irrational, illogical, and wholly unjustifiable interpretation of law; (4) and irrational, illogical, and a

wholly unjustifiable application of law to fact; and (5) otherwise unreasonable, arbitrary, capricious, and an abuse of discretion. *Id.* § 17A.19(10)(c), (g), (i), (l), (m), (n).

**RELIEF SOUGHT**

33. Gary Dickey Jr. respectfully requests this Court reverse the Board's order, award a judgment with costs assessed to the Board, and remand with instructions to process the complaint in accord with the requirements of Iowa Code section 68B.32B.

DATED this 9th day of October 2018.



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